The Commercial Division 67 of the Boston Newspaper Printing Pressmen's Union, Local 3 *and* George H. Dean Company and Graphic Communications Conference/International Brotherhood of Teamsters, Boston Local 600M.

Case 1–CD–1060

April 23, 2007

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND KIRSANOW

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charge in this proceeding was filed by the Employer on October 18, 2006, alleging that the Respondent, the Commercial Division 67 of the Boston Newspaper Printing Pressmen's Union, Local 3 (Local 3), violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Graphic Communications Conference/International Brotherhood of Teamsters, Boston Local 600M (Local 600M). The hearing was held on November 17, 2006, before Hearing Officer Gene Switzer.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

George H. Dean Company (the Employer), a Massachusetts corporation, performs high-end commercial and financial printing at its facility in Braintree, Massachusetts, where, in the course and conduct of its business operations, it annually derives gross revenues in excess of $50,000 from the sale of services directly to customers located outside the Commonwealth of Massachusetts. The Employer also purchases and receives goods valued in excess of $50,000 directly from points located outside the Commonwealth of Massachusetts. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 3 and Local 600M are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer divides its production of high-end glossy color commercial and financial documents at its Braintree facility into three departments. In the prepress typesetting department, employees receive customer orders and electronically construct and format documents. Once a document is assembled, the typesetting department sends it to employees in the printing department, who are represented by Local 3. These workers print the formatted document. After printing, the document is sent to the bindery department, where employees represented by Local 600M cut, fold, and bind the document.

Prior to 1994, the Employer also ran a copy center in its Braintree facility. Employees represented by the Graphic Arts Union Local 67, which the parties stipulated subsequently merged into Local 3, operated the old copy center. The Employer's collective-bargaining agreement with Local 3 still contains a grandfathered wage rate provision for the old copy center employees. In the Employer's old copy center, no binding work was done. Instead, after printing, documents were transferred to the bindery. By 1994, competition had rendered the copy center less profitable, and the Employer closed it.

In early 2006, however, the Employer purchased printer R.S. Rowe Co. (Rowe) and some of its machinery, including copiers, a free-standing collating machine, a perfect binder, a cutter, and a stitching machine, and placed this equipment in a newly created copy center. Like the old copy center, the new copy center produces a different product from that generally produced at the facility. Instead of generating time-intensive, high-end glossy color documents, the new copy center produces black and white documents, especially but not exclusively for municipal bond offerings. With the new machinery acquired from Rowe, workers in the copy center are able to quickly format, print, and bind these materials in one location.

The Employer hired four employees from Rowe. Two were assigned to the prepress unit, and two were assigned to the new copy center and have since been represented by Local 3. Those two employees do all of the copy center work. They take the orders, print the materials, and bind the printed documents. Binding has constituted about 20 percent of the work in the new copy center.

Although Local 600M initially stated that it would defer to Local 3 as to the assignment of work to employees in the new copy center, Local 600M has subsequently taken the position that the binding portion of the new copy center work should have been assigned to bindery workers represented by Local 600M. On October 16, 2006, Local 3 sent a letter to the Employer stating that it would take economic action against the Employer, including picketing, boycotting, and striking, in response to

any attempt by the Employer to assign the binding work to employees represented by Local 600M.

B. Work in Dispute

The disputed work is the bindery work to the extent it is performed in the new copy center at the Employer's Braintree facility.

C. Contentions of the Parties

The Employer contends that the binding work in the new copy center should be assigned to employees represented by Local 3 based on collective-bargaining history, employer preference, past practice, area and industry practice, relative skills, and economy and efficiency of operations. Local 3 contends that the work should be assigned to workers it represents for the same reasons. Local 600M contends that workers it represents should be assigned the work based on past practice and collective-bargaining history.

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that (1) there are competing claims to the disputed work, and (2) a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R&D Thiel),* 345 NLRB No. 94, slip op. at 3 (2005).

We find that these requirements have been met. Both Local 3 and Local 600M admittedly claim the binding work in the copy center, and Local 3 admits that it has threatened to picket, boycott, or strike if the work is reassigned to workers represented by Local 600M. Finally, the parties stipulated that there is no agreed-upon method of resolving the dispute.

We therefore find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k). Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting),* 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction),* 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The Employer is currently a party to collective-bargaining agreements with both Local 3 and Local 600M. The Employer's agreement with Local 3 includes a wage-rate provision for "copy center" work. This provision has been grandfathered in from previous contracts, dating from the pre-1994 period when the Employer maintained a copy center at its Braintree facility. On the other hand, the Employer's agreement with Local 600M describes that union's bargaining unit work as including "all other operations, hand or machine, which are branches of or allied to the bookbinding and finishing industries." There are no relevant certifications. We find that both unions have language in their contracts supportive of their respective claims to the work in dispute, and therefore we find that this factor does not favor awarding the work to employees represented by either union.

2. Company preference and past practice

The Employer has clearly expressed its preference to use employees represented by Local 3 to perform the work in dispute. As the work in dispute is new work, resulting from the Employer's recent purchase of Rowe machinery and subsequent creation of a new copy center, past practice does not favor either union. Given the Employer's preference, however, we find that this factor favors assigning the work to employees represented by Local 3.

3. Area and industry practice

The Employer argues that area practice supports the assignment of the work to employees represented by Local 3. At several other printing plants in the area, similar copy centers typically are run by pressmen like those represented by Local 3. However, none of those plants operate with a separate bindery unit, and therefore those employers have not faced the dilemma presented here. We therefore find that this factor does not weigh in favor of either group of employees.

4. Relative skills

The Employer argues that the relative skills of the two groups of workers weigh in favor of assigning the work to employees represented by Local 3, who worked on these very same machines while employed at Rowe. Employees represented by Local 600M, however, have consistently worked on very similar equipment to that installed in the new copy center, and therefore already possess most of the skills necessary to operate that machinery. Therefore, this factor does not weigh in favor of either group of employees.

5. Economy and efficiency of operations

The Employer argues that economy and efficiency of operations favors assigning the work to employees represented by Local 3. We agree. The copy center operates with low profit margins and is profitable only to the extent that it can quickly assemble and ship customer orders. Currently, the two copy center employees are able to operate the copy center economically and efficiently. The copy center would operate less efficiently if the binding work had to be shipped to the bindery department, or if employees from the bindery department had to be called in to the copy center to finish every order. We find that this factor weighs in favor of awarding the work to employees represented by Local 3.[1]

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 3 are entitled to continue performing the work in dispute. We reach this conclusion relying on employer preference and economy and efficiency of operations.

[1] The Employer also argues that any slight loss of efficiency, such as would result from the transfer of binding work to employees represented by Local 600M, could result in the closure of the copy center and job loss. We do not rely on this contention in reaching our conclusion.

In making this determination, we are awarding the work to employees represented by Local 3, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of George H. Dean Company represented by the Commercial Division 67 of the Boston Newspaper Printing Pressmen's Union, Local 3 are entitled to perform bindery work to the extent it is performed in the new copy center at the Employer's Braintree, Massachusetts facility.

Dated, Washington, D.C. April 23, 2007

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter N. Kirsanow,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD